THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0667, In the Matter of Elizabeth A. Ross and Thomas A. Ross, the court on September 20, issued the following order:

The respondent, Thomas A. Ross, appeals an order of the trial court requiring that he contribute $100 a week to the college savings account established in the parties' 1991 divorce decree for the benefit of their daughter. He contends that the order violates RSA 458:17 and RSA 458:35-c. He also argues that even if the order is permissible under these statutes, the trial court erred in failing to reduce the amount required under the decree to comply with current child support guidelines. We affirm.

The respondent first argues that his obligation to contribute to his daughter's college savings account is unenforceable in light of amendments to RSA 458:17 and RSA 458:35-c enacted in 2004. See Laws 2004, ch. 1; Laws 2004, ch. 136. Chapter 1 addressed the court's authority to order parents to pay the college expenses of their adult children; chapter 136 addressed child support obligations for adult children. We have previously held that chapter 1 does not apply to post-enactment modifications of orders that were issued prior to the change in legislation. In the Matter of Donovan & Donovan, 152 N.H. 55, 64 (2005); In the Matter of Forcier & Mueller, 152 N.H. ___, ___ (decided July 19, 2005). It therefore did not require the trial court to vacate the portion of the parties' 1991 divorce decree that established the college savings account. The enactment of chapter 136 does not alter our conclusion.

The respondent also argues that the trial court erred because the amount of his contribution exceeded the amount due under the child support guidelines. We have previously made clear that child support and educational expenses are not synonymous. See In the Matter of Jacobson & Tierney, 150 N.H. 513, 516-17 (2004); In the Matter of Gilmore & Gilmore, 148 N.H. 111, 112-14 (2002). The trial court found that the parties agreed to the contribution in the permanent stipulation incorporated into their 1991 divorce decree. The court further found that the respondent had "not met his burden of proof that his financial situation justifies a modification of his agreement to contribute towards college." Based on the record before us, we find no error in this ruling. See Donovan, 152 N.H. at 58-59 (modification order will be set aside only if it clearly appears on the evidence that the trial court's exercise of discretion was unsustainable).

Affirmed.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

Eileen Fox,
Clerk